Exhibits

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GALLEON S.A., BACARDI-MARTINI U.S.A., INC. and BACARDI & COMPANY LIMITED, *Petitioners,* v. HAVANA CLUB HOLDING, S.A. and EMPRESA CUBANA EXPORTADORA DE ALIMENTOS Y PRODUCTOS VARIOS, S.A., d.b.a. CUBAEXPORT, *Respondents.*	Cancellation No. 24,108

RESPONDENT CUBAEXPORT'S BRIEF IN OPPOSITION TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT

Pursuant to the Trademark Trial and Appeal Board's ("Board" or "TTAB") April 15, 2003 order, respondent Empresa Cubana Exportadora de Alimentos y Productos Varios, S.A. ("Cubaexport") respectfully submits this brief in opposition to petitioners Galleon S.A., Bacardi-Martini U.S.A., Inc. and Bacardi & Company's (collectively "Bacardi") motion for summary judgment, contained in the *Notice Of Motion To Resume Proceedings, To Substitute Parties And For Summary Judgment Pursuant To Rule 56, Fed. R. Civ. P*, filed on March 15, 2002.[1] Bacardi's motion should be denied for the reasons stated below.

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[1] The motions to resume proceedings and to substitute parties contained therein are now moot in light of the Board's January 21 and April 15, 2003 orders.

However, Cubaexport respectfully requests that the Board first address the fundamental issue of the fairness of this proceeding in light of Bacardi's improper *ex parte* communications with the Patent and Trademark Office. That issue is raised in Cubaexport's April 25, 2003 motion filed pursuant to the Board's April 15, 2003 order and in response to the February 19, 2003 motion filed by Havana Club Holding, S.A. ("HCH").

Bacardi's motion for summary judgment should be denied as a matter of law because Bacardi is precluded from petitioning to cancel the 1976 U.S. Registration No. 1,031,651 of the HAVANA CLUB mark ("HAVANA CLUB registration"), more than five years after issuance, on the basis that Cubaexport failed to renew the registration in its name. Even if that were not the case, the Board should not cancel the registration. The U.S. Patent and Trademark Office ("PTO") accepted a timely complete application for renewal in 1996 from HCH, when no person other than HCH could have filed an acceptable application for renewal. Moreover, voiding the renewal and canceling the registration now, because the United States Government revoked *ex post facto* authority to assign the registration, would be manifestly unfair.

I. FACTS

Cubaexport and its successors have used the HAVANA CLUB mark to sell Cuban rum worldwide (except the United States) since 1971. (Perdomo Decl. ¶ 4)[2] Only the United States embargo against Cuban products has prevented rum from being

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[2] "Huang Decl." refers to the accompanying Declaration of Eric Huang. "Perdomo Decl." refers to the Declaration Of Luis Perdomo Hernandez In Opposition To Partial Summary Judgment of 6/6/1997, submitted in the Havana Club Holding v. Galleon litigation, attached in Huang Decl., Tab A.

sold in the United States under the mark covered by the HAVANA CLUB registration. (Perdomo Decl. ¶ 15.) That mark was properly registered in the United States by Cubaexport on January 27, 1976. (*Id.* ¶ 6.) By 1993, Cubaexport had registered the mark in approximately sixty countries. (*Id.*)

In 1993, through a series of assignments, the worldwide ownership of the Cuban rum business, and the worldwide trademarks and registrations appurtenant to that business, were transferred from Cubaexport to HCH. (*Id.* ¶¶ 8, 12, 13.) The assignments were recorded with the PTO. (*Id.* ¶ 17.) The United States Department of Treasury Office of Foreign Assets Control ("OFAC") authorized the transfer of the United States trademark rights and registration to HCH *nunc pro tunc* by issuing a specific license in November 1995. (Huang Decl., Tab B.)

In 1996, HCH, as the then-current registrant of record, properly renewed the United States registration by filing a complete renewal application with the required fee during the renewal period. (Perdomo Decl. ¶ 21; Huang Decl., Tab C.) ***The application for renewal was accepted by the PTO.*** (Huang Decl., Tab D.)

After the renewal was accepted by the PTO, and without explaining its reasons, OFAC revoked the specific license authorizing the transfer to HCH. (Huang Decl., Tab E.)

In August 1997, the district court, in an infringement proceeding brought by HCH against Bacardi, ruled that the OFAC revocation acted to void the transfer of United States rights to HCH. *See Havana Club Holding, S.A.* v. *Galleon S.A.*, 974 F.

Supp. 302, 311 (S.D.N.Y. 1997).[3] As a result, the district court directed that ownership of the HAVANA CLUB registration revert to Cubaexport and invited Cubaexport and HCH (as well as the other parties to the assignments) to reform their agreements. *Id.* at 312. The Second Circuit Court of Appeals affirmed the district court's decision in February 2000 (*see Havana Club Holding S.A.* v. *Galleon S.A.*, 203 F.3d 116 (2d Cir. 2000)), and the district court's decision was implemented by the PTO on January 15, 2002 so as to invalidate the assignments and restore Cubaexport as owner of the HAVANA CLUB registration (*see* Huang Decl., Tab F). The parties to the assignments subsequently reformed their agreement to reflect ownership in Cubaexport. (Huang Decl., Tab H.) In that agreement, the parties agreed that the renewal application by HCH was and/or should be considered to have been taken by and for the benefit of Cubaexport. (*Id.*)

II. BACARDI'S MOTION MUST BE DENIED BECAUSE CANCELING AN OVER-FIVE-YEAR-OLD REGISTRATION FOR WRONG-PARTY RENEWAL IS NOT PERMISSIBLE UNDER SECTION 14 OF THE LANHAM ACT

Bacardi's motion must be denied because Barcardi does not rely on a statutorily permissible ground for cancellation.

Section 14 of the Lanham Act limits the grounds upon which a petition to cancel a registration that is more than five years old may be based. "[A] mark that has been registered five years is protected from cancellation except on the grounds stated in §§ 14(c) and (e) [of the Lanham Act.]" *Park 'N Fly, Inc.* v. *Dollar Park And Fly, Inc.*,

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[3] The district court followed the August 1997 opinion with a partial judgment order in October 1997 implementing the court's findings. (S.D.N.Y. Order of 10/26/01, Huang Decl., Tab G.)

469 U.S. 189, 197 (1985) (discussing 15 U.S.C. § 1064(c) & (e));[4] *see also Treadwell's Drifters, Inc.* v. *Marshak*, 18 U.S.P.Q.2d 1318, 1320 (TTAB 1990); *ABC Moving Co.* v. *Brown*, 218 U.S.P.Q. 336, 339 (TTAB 1983).

Those grounds do not include improper renewal of a registration, which is the only ground on which Bacardi relies in support of its motion. Because the HAVANA CLUB registration issued in 1976 and Bacardi's July 1995 petition to cancel (and August 1996 amended petition) were filed more than five years later, Bacardi's motion fails as a matter of law. None of the authorities cited by Bacardi says otherwise.[5]

III. IN ANY EVENT, BACARDI HAS FAILED TO MEET ITS BURDEN OF SHOWING THAT THE 1996 RENEWAL WAS INVALID AND THAT THE REGISTRATION SHOULD BE CANCELLED

A. The Renewal Papers Were Timely And Properly Filed

During the applicable statutory renewal period for the HAVANA CLUB registration, the Lanham Act and the PTO's Trademark Rules required renewal of registration within a nine-month period:

> An application for renewal may be filed by the registrant at any time within six months before the expiration of the period for which the certificate of registration was issued or renewed or it may be filed within

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[4] In 1988, Section 14 of the Lanham Act was amended to change the subsections from letters to numbers. *See* Pub. L. 100-667, Title I, § 115, 102 Stat. 3940 (1988). Thus, for example, Section 14(c) became Section 14(3).

[5] None of Bacardi's inapposite *ex parte* cases says that wrong-party renewal is a ground for cancellation under Section 14(3). Moreover, in *Brittingham* v. *Jenkins*, 914 F.2d 447 (4th Cir. 1990), on which Bacardi relies, dicta indicating that Section 14(3) only limits grounds of attack against incontestable registrations does not accurately reflect the law. *Compare Brittingham* with *Park 'N Fly, Inc.*, 460 U.S. at 197 ("Without regard to its incontestable status, a mark that has been registered five years is protected from cancellation except on the grounds stated in §§ 14[3] and [5].").

three months after such expiration on payment of the additional fee required.

37 C.F.R. § 2.182 (1995); *see also* 15 U.S.C. § 1059 (1994). Rule 2.183 described the requirements for a complete renewal application, including the appropriate fee and a statement of use, or excusable nonuse, in commerce. *See* 37 C.F.R. § 2.183 (1995). "The terms 'applicant' and 'registrant' embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant." 15 U.S.C. § 1127.

The HAVANA CLUB registration was scheduled to expire on January 27, 1996. A complete application for renewal, including the requisite fee, was filed by HCH on January 12, 1996, well before the end of the renewal period, April 27, 1996.[6] As far as all parties concerned knew in 1996, HCH was the proper registrant by assignment. At that time, there was a specific license authorizing the assignment. HCH acted in every way consistent with a desire to preserve the registration. All papers were filed, and ***the PTO accepted these papers and correctly renewed the registration***. After it became apparent that the district court's order invalidated the original assignment of the registration, the parties to the assignments reformed their agreements, per the district court's invitation, to reflect ownership in Cubaexport and renewal on behalf of Cubaexport. (Huang Decl., Tab H).

HCH was the then-current registrant for the HAVANA CLUB registration and the only party that could have renewed it. The PTO could not have accepted an application for renewal by Cubaexport in January 1996:

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[6] Bacardi does not (and cannot) dispute that the application for renewal filed by HCH satisfied all statutory and PTO requirements for a complete application.

> The application for renewal ***must be executed and filed by the person who is the owner of the registration***. Section 9 (the renewal section of the Act) speaks in terms of the registrant renewing the registration. The term "registrant" includes both the original registrant and a person who has acquired ownership through proper transfer of title.

TMEP § 1605.03 (May 1993) (citation omitted, Huang Decl., Tab I). *See also* 37 C.F.R. § 2.182 (1995). The PTO records at that time reflected ownership in HCH, not Cubaexport. HCH was the owner of the registration at that time through a proper assignment. When the registration was renewed, Cubaexport, HCH, and the PTO could not have foreseen that the assignments would be invalidated at a later date, based on the revocation of a license that was valid in 1996 when the renewal application was filed. Cubaexport could not have renewed in 1996.

B. In The Face Of That Timely And Proper Renewal, Bacardi Has Not Met Its Burden Of Showing That The Registration Should Be Cancelled

Bacardi, as the petitioner and movant for summary judgment, has the burden of proving that the registration should be cancelled as a matter of law. *See* TBMP § 528.01. Wholly apart from its failure to rely on a ground authorized by Section 14(3), Bacardi has not met that burden. Instead, Bacardi mischaracterizes the district court's decision and order and fails to cite any authority that would support cancellation of the HAVANA CLUB registration here even if wrong-party renewal were a ground for cancellation under Section 14(3).

1. Bacardi Mischaracterized The District Court's Decision and Order

Bacardi would like the Board to believe that by invalidating the assignment the district court invalidated the registration. However, the August 1997

district court decision and the resulting October 1997 district court order are clear. The district court:

- voided the assignment of the registration to HCH. *See Havana Club Holding*, 974 F. Supp. at 311.
- restored the *status quo ante* with respect to ownership of the registration, stating that "*all rights* to the registration revert to Cubaexport." *See* S.D.N.Y. Order of 10/26/01, ¶ 5, emphasis added (Huang Decl., Tab G).
- ***declined to cancel the registration***. *See Havana Club Holding*, 974 F.Supp. at 311-12.

Despite this, Bacardi opens its brief by stating that the parties were ordered to show cause why the "USPTO should not now rectify the USPTO's records to reflect the Order of Judge Shira Scheindlin dated October 20, 1997 (the '***Cancellation Order***' ...) and ***cancelling the extent registration***." (Bacardi's 3/15/2002 Br., at 1.)

Bacardi then says Commissioner Chasser erred when she rectified the register, but:

> ***inexplicably failed*** to refer to the most critical aspect of the Cancellation Order—cancellation of the extant U.S. Registration No. 1,031,651 of the Mark Havana Club in the name of HCH. (Bacardi's 3/15/2002 Br., at 2 (emphasis added).)

With this as introduction, Bacardi urges:

> The U.S. HAVANA CLUB registration ... must be expunged from the records of the USPTO as no registration can persist on the USPTO records once a final judgment has decreed that the record holder, in fact owns no interest in the registered mark.

(*See* Bacardi's 3/15/2002 Br., at 2.)

The district court never ordered the registration cancelled; it refused to do so.[7] This was expressly recognized by the Board in the order of interlocutory attorney David Mermelstein dated May 13, 2002, at n.3 (Huang Decl., Tab K):

> It appears that the [district court's] Partial Judgment is the document repeatedly referred to by petitioners during the telephone conferences as the "cancellation order." However, nothing in the Partial Judgment refers to cancellation of the subject registration. On the contrary, the Partial Judgment specifically provides that "the status quo ante as of the October 23, 1993 date of said abortive original transfer agreement is restored, and Cubaexport retained whatever rights it had in said mark and the related U.S. Registration as of said date, *notwithstanding the invalid transfers.*" The District Court's failure to order cancellation of the registration was not an oversight. . . . Petitioners' characterization of the Partial Judgment as a "cancellation order" thus appears to be little more than wishful thinking. (Emphasis in original.)

Thus, as the Board has recognized and acknowledged, the PTO correctly implemented the district court's order by conforming the registration records to reflect ownership in Cubaexport without canceling the registration. Nothing in Bacardi's current motion shows why that decision was wrong or why the HAVANA CLUB registration "must be expunged."

Bacardi also incorrectly asserts that cancellation is the only possible outcome of the district court's order. The district court, however, expressly contemplated that the registration could survive its decision. In its August 1997 opinion, the court noted that the parties to the original assignments could reform their agreements to reflect ownership in Cubaexport. *Havana Club Holding*, 974 F.Supp. at 312. Accordingly, the parties reformed the agreements that were invalidated by the district court such that

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[7] *Havana Club Holding*, 974 F. Supp. at 312 ("[Bacardi's] petition to cancel is denied, and all rights to the registration revert to Cubaexport."). Bacardi thereafter petitioned the PTO Commissioner and the United States Court of Appeals for the Federal Circuit to cancel the registration due to the alleged wrong-party renewal; they too refused to cancel the registration. (Huang Decl., Tabs H & J.)

Cubaexport retained ownership and the United States registration was deemed renewed by HCH on behalf of Cubaexport.[8]

2. Bacardi Fails To Cite Authority Supporting Cancellation Here

Bacardi argues that, because of the district court decision canceling all of HCH's rights in the registration, the registration itself should be cancelled here for failure to renew. Even if Section 14(3) authorizes such a cancellation (which it does not), Bacardi's argument fails. Bacardi does not (and cannot) cite any authority supporting cancellation where ***a timely renewal application is filed in accordance with all requirements by the then-current registrant, i.e., the party who owned the registration when the renewal application was filed.***

In *In re Caldon Co. Ltd. Partnership*, 37 U.S.P.Q.2d 1539 (Comm'r Patents 1996), on which Bacardi relies, the filing at issue (a section 8 declaration) was made (inadvertently) in the name of a party that was not the registrant of record and had no ownership interest in the registration when the declaration was filed. Here, HCH – the then-current registrant and the only entity from whom the PTO could have accepted a renewal application – filed a complete timely renewal application (with appropriate fee and required declaration), which was accepted by the PTO.

The other cases that Bacardi cites in support of summary judgment are equally inapposite. Like *Caldon*, some involve filings of section 8 declarations, not

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[8] Bacardi's reliance on *Brittingham* v. *Jenkins* is inapposite here. The court in that case essentially quieted title in favor of the defendant in an infringement action. The court held that Brittingham, the registrant, was never entitled to register the mark and that Jenkins, the defendant, was the common law owner of the mark. On summary judgment here, there is no question as to the propriety of the original registration by Cubaexport. The district court found that Cubaexport was the owner of the registration.

renewal applications, by an entity other than the then-current registrant. *See In re Precious Diamonds,* 635 F.2d 845 (C.C.P.A. 1980); *In re Weider,* 212 U.S.P.Q. 947 (Comm'r. Patents 1981). The others involve incomplete or unfiled renewal applications, *see In re Holland America Wafer Company*, 737 F.2d 1015 (Fed. Cir. 1984) (defective application); *In re Dandar*, Petition No. 97-503, 2000 TTAB LEXIS 317 (T.T.A.B. May 5, 2000) (no filing); *In re Culligan International Company*, 915 F.2d 680 (Fed. Cir. 1990) (failure to pay fee); *In re Michael Stern & Co.*, 199 U.S.P.Q. 382 (Comm'r Patents 1978) (failure to pay fee); *Ex parte Firmenich & Co.*, 137 U.S.P.Q. 476 (Comm'r Patents 1963) (defective application).[9]

IV. EVEN IF THE BOARD FINDS THAT HCH WAS NOT THE REGISTRANT WHEN IT FILED AN OTHERWISE PROPER AND TIMELY RENEWAL, EQUITABLE PRINCIPLES WARRANT THAT THE BOARD SHOULD RECOGNIZE THE RENEWAL AS VALID

A. The Policy Behind Renewal Supports A Finding That The Renewal Was Valid

Finding that renewal by HCH was proper is consistent with the policy and purpose of renewal of registrations. The purpose of requiring registrants to renew trademark registrations is to minimize "dead wood," *i.e.*, the number of inactive marks on the Register. *See McCarthy's On Trademark And Unfair Competition Law* § 19.142 (citing *The U.S. Trademark Ass'n Trademark Rev. Comm'n Rep. And Recommendations To USTA Pres. And Bd, of Directors*, 77 Trademark Rep. 375, 408 (Sep-Oct 1987)). Here there is no "dead wood" problem because HCH and/or Cubaexport has used the

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[9] Bacardi's argument that Cubaexport could not have made the required declaration of excusable nonuse is meritless. That argument relies on the very assignments that Bacardi successfully sought to void in the district court. Bacardi cannot now argue that those same assignments deprive Cubaexport of the right to its registration.

mark worldwide, and intends to use the mark to identify Cuban rum in the United States when the United States embargo is lifted. *Havana Club Holding*, 974 F. Supp. at 305. Finding the renewal of the registration valid is consistent with the underlying policy of renewal.

B. Depriving Cubaexport Of The Benefit Of The Renewal Would Be Unfair

Both Cubaexport and HCH acted in good faith, relying on the original OFAC authorization to assign the HAVANA CLUB registration. Although the revocation of HCH's specific license authorizing assignment, according to the district court, rendered the assignment void *ab initio*, it did not and should not cancel the registration. As the district court expressly ruled, "all rights" to the registration reverted to Cubaexport. Moreover, it is unfair to deprive a party of a valuable property right based on an *ex post facto* revocation of authority. *Cf. Cabo Distrib. Co.* v. *Brady*, 821 F. Supp. 601, 609 (N.D. Cal. 1992).

In *Cabo*, the district court held that a Bureau of Alcohol, Tobacco and Firearms decision to revoke a certificate of label approval was invalid because the Bureau did not follow procedural due process requirements. The plaintiff received approval for "Black Death vodka" from the Bureau and proceeded to invest money and resources to market the vodka under that label, in reliance on that certificate. Three years after the initial certificate was issued, the Bureau, under public pressure from the medical community, revoked the certificate. The district court found that, because a trademark is a valuable property right, it could not be destroyed without due process. The court held that it would be unfair to deprive the plaintiff in that case, without appropriate procedural

safeguards, of use of the label after they invested significant resources in reliance on the original certificate.

Here, Bacardi seeks the destruction of the HAVANA CLUB registration because OFAC revoked authority to assign the registration after the renewal of the registration was accepted by the PTO. That plainly would be unfair. Both Cubaexport and HCH acted in good faith to preserve the United States registration, in keeping with their worldwide marketing of Havana Club rum and intention to market that rum in the United States once the trade embargo against Cuba is lifted, and consistent with all the policies underlying the renewal requirement. Relying on the original grant of authority from OFAC, Cubaexport assigned the registration to HCH, which in turn renewed the registration. Both Cubaexport and HCH believed that the assignment of the HAVANA CLUB registration was valid and effective when they filed a renewal application, ***which the PTO accepted.*** They could not have known in 1996 that several years later, and only after much litigation of complex issues, a court would decide that HCH was not the owner of the registration and the proper party to renew.

C. HCH Held At Least Equitable Title In The Registration When It Renewed

It is appropriate to recognize equitable title for the purpose of authorizing an action that is taken on behalf of the beneficial owner of a valuable property, especially where the circumstances demonstrate that the owner does not wish to abandon the property. *Cf. Goodis* v. *United Artists Television, Inc.*, 165 U.S.P.Q. 3 (2d Cir. 1970) (holding that publisher who printed installments of author's work with notice in name of publisher obtained a copyright on behalf of the author as beneficial owner).

In *Goodis*, the Second Circuit held that, although a copyright notice named the publisher, not the author, when a work was first published in installment form, a valid copyright was obtained on behalf of the author as beneficial owner. The court found that the circumstances showed that the author had no intention to donate his work to the public:

> We are loath to bring about the unnecessarily harsh result of thrusting the author's product into the public domain when, as here, everyone interested in "Dark Passage" [the work] could see [the publisher's] copyright notice and could not have believed there was any intention by [the author] to surrender the fruits of his labor. (*Goodis*, 165 U.S.P.Q. at 5.)

Cubaexport and HCH intended to preserve the HAVANA CLUB registration, not surrender it. They entered into an assignment of legal title to the HAVANA CLUB & Design mark in the over sixty countries including the United States. The business is being operated worldwide (except in the United States, because of the United States embargo). All appropriate procedures were followed to transfer title and to preserve the United States registration, looking forward to the eventual end of the embargo. But for the *ex post facto* revocation of authority to assign, which occurred after the renewal was accepted by the PTO, *legal* title would rest with HCH today. Because the district court has held that legal title cannot rest with HCH, *equitable* principles require that the renewal be held valid on the basis that HCH had equitable title and authority to act on behalf of Cubaexport as beneficial owner for the limited purpose of renewal of the HAVANA CLUB registration.

D. The Board Can And Should Recognize The Renewal As Valid

The Board (and the Director) have the power to recognize the renewal by HCH as valid. The PTO Director, not the Commissioner of Trademarks, gives the Board the authority "to determine and decide the respective rights of registration" in a

cancellation proceeding. *See* 15 U.S.C. § 1067(a). The PTO Director is responsible for registration of trademarks and is required to perform his duties in a fair, impartial and equitable manner. *See* 35 U.S.C. § 3(a)(2). *See also Bull, S.A.* v. *Comer*, 55 F.3d 678, 679 (D.C. Cir. 1995) (applying equitable principles to excuse party's non-compliance with statutory renewal requirement where party relied on government action).

Here, Cubaexport justifiably relied on the original grant by OFAC of authority to assign the registration to HCH. Cubaexport also relied on the acceptance of the renewal by the PTO and had no reason to think that it was obligated to renew in 1996. OFAC revoked its license after the assignment was executed and recorded at the PTO and after HCH filed its renewal papers. The Board should not penalize Cubaexport for its justified reliance by invalidating the registration.

Bacardi would like the Board to believe that its hands are tied because the renewal deadline is statutory and that the Director (through the Board) therefore cannot act equitably in this case. The authority Bacardi cites, however, does not support its argument. Trademark Rules 2.146 and 2.148, on which Bacardi relies, limit the discretion of the Commissioner of Trademarks, not the PTO Director.[10] The cases cited by Bacardi involve *ex parte* petitions to the Commissioner, not *inter partes* proceedings for cancellation before the Board. Because the Board gets its authority from the Director, not the Commissioner, the Board can and should do equity in determining the respective rights of registration and find the renewal valid.

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[10] The Commissioner of Trademarks, appointed by the Secretary of the Treasury, is responsible for the "management and direction of all aspects of the activities of the Office that affect the administration of . . . trademark . . . operations." *See* 35 U.S.C. § 3(b)(2).)

V. CONCLUSION

For the foregoing reasons, as well as those set forth in HCH's separately filed memorandum of law in opposition to Bacardi's motion for summary judgment, Bacardi's motion for summary judgment must be denied.[11]

Dated: May 30, 2003

Respectfully submitted,

Herbert F. Schwartz
Vincent N. Palladino
Susan Progoff
FISH & NEAVE
1251 Avenue of the Americas
New York, New York 10020
(212) 596-9000

Attorneys for Respondent,
Empresa Cubana Exportadora de
Alimentos y Productos Varios, S.A.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on the date which appears below.

Name

May 30 2003
Date of Signature and Deposit

[11] HCH's arguments, if and to the extent not raised herein, are hereby adopted and incorporated herein by reference.

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2003, I caused *Respondent Cubaexport's Brief In Opposition To Petitioners' Motion For Summary Judgment* to be served on petitioners and respondent Havana Club Holding by causing a true and correct copy thereof to be delivered by hand to:

Counsel of Record for Petitioners:

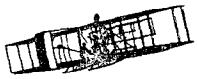
William Golden, Jr.
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

Counsel of Record for Respondent Havana Club Holding, S.A.

Charles Sims
Proskauer Rose LLP
1585 Broadway
New York, New York 10036

Eric Huang

TTAB

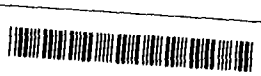


FISH & NEAVE

ERIC HUANG
DIRECT DIAL 212.596.9024
DIRECT FAX 646.728.2548
E-MAIL EHUANG@FISHNEAVE.COM

May 30, 2003

VIA EXPRESS MAIL



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Cancellation No. 24,108:
Galleon, S.A. et al. v. Havana Club Holding, S.A. et al.

Dear Sirs:

I enclose for filing in the above proceeding *Respondent Cubaexport's Brief In Opposition To Petitioners' Motion For Summary Judgment* and *Declaration of Eric Huang*. I also enclose a Certificate Of Service for each of these filings.

Respectfully submitted,

Eric Huang

EH:eh
Enclosures

cc: William R. Golden, Jr., Esq. (by hand - w/ enclosures)
Charles S. Sims, Esq. (by hand - w/ enclosures)